



POLICE DEPARTMENT

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Thomas Weil
Tax Registry No. 949788
104 Precinct
Disciplinary Case No. 2014-12487

The above-named member of the Department appeared before me on June 8, 2015, charged with the following:

1. Said Police Officer Thomas Weil, on or about May 9, 2013, at approximately 2305 hours, while assigned to the 104th Precinct and on duty, in the vicinity of 74-17 Grand Avenue, Queens County, used excessive force against Person A, in that he punched Person A without sufficient legal authority.

P.G. 203-11 – USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Jonathan Fogel, Esq. Respondent was represented by John Tynan, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

FINDINGS AND ANALYSIS

On May 9, 2013, at approximately 11:00 p.m., Respondent was in uniform patrolling a sector within the 104 Precinct. He responded to a radio run of a larceny in progress at a Stop & Shop on Grand Avenue in Queens. When Respondent arrived at the scene the store management pointed out an individual on 74th Street adjacent to the store and identified him as the shoplifter. This individual was Person A. Respondent and his partner, Officer Santos, stopped Person A and found the stolen merchandise in his bag. Person A was arrested. After he was placed in handcuffs, Person A sustained injuries and was taken to Elmhurst Hospital where he was diagnosed with fractures of the right and left jaw and a deviated nasal septum. It was also noted in the medical records that he had a strong smell of alcohol on his breath and he was described as intoxicated. (CCRB Ex. 3A).

Two accounts of the events surrounding the arrest have been presented to this tribunal. The first account, as submitted by CCRB, is a transcript and audio recording of their interview of Person A. The second account comes from trial testimony of Respondent at this disciplinary hearing.

Person A's hearsay statement is of very little, if any, value in this case. Not only does it suffer from the deficiencies inherent in all testimony which is not subject to cross-examination, but it also is clear from Person A's statements to the CCRB investigator that he indeed was intoxicated at the time of the arrest and, as he says several times, he is "not quite sure how it all happened." His account is confused and in response to many of the investigator's questions concerning significant details, Person A responds that he doesn't

recall. (CCRB Exs. 1A and B). Accordingly, this tribunal did not rely on this hearsay statement.

Respondent acknowledged that he used force in this case but argues that the force was justified. According to Respondent, after he ascertained that the stolen merchandise was in Person A's bag, he turned him around and handcuffed him. (Tr. p. 34)

Respondent indicated that Person A was compliant and respectful at this time. (Tr. pp. 35, 38). Respondent stated that they walked Person A across the parking lot and intended to seat him in the marked police car, but at this point Person A became combative. (Tr. p. 38). Respondent testified that Person A was cursing and screaming about his pet and he refused to get into the car. (Tr. p. 39). When Respondent and Santos attempted to put Person A's legs into the police car, Person A kicked Santos in the chest. (Tr. pp. 40-41). After they finally got him inside the car, Person A was lying on his back and kicking at the rear passenger window. (Tr. p. 42). Respondent testified that he opened the car door twice to give Person A verbal commands to stop kicking and that Person A refused and tried to kick him in the head, so Respondent punched him in the face. (Tr. p. 43). Respondent did not remember if he hit Person A more than once. (Tr. p. 44).

On cross-examination Respondent testified that at the time he opened the car door, he was standing at the rear driver's side door of the car and Person A was lying in the backseat, face up with handcuffs behind his back. Person A's head was by the rear driver's side door and his legs were on the rear passenger side of the vehicle. (Tr. pp. 68-69, 71, 80-81). Respondent testified that the way Person A attempted to kick him was that, "He was on his back and he tried to roll backwards and kick me over his own head." (Tr. p. 70). He stated that Person A did not actually strike him. He further testified that when he

punched Person A, his legs were "most likely" back down on the backseat. (Tr. p. 72). Respondent confirmed that he intended to punch Person A in the face and that he punched him with a closed fist. (Tr. pp. 82-83). Prior to punching Person A, Respondent did not ask Santos, who was standing nearby, for any assistance in controlling Person A. (Tr. p. 78-80).

Based on Respondent's own testimony, I find him Guilty of the Specification. As the Patrol Guide points out, "All uniformed members of the service are responsible and accountable for the proper use of force under appropriate circumstances." While force clearly must be used by officers in certain situations to accomplish a legitimate police purpose, the Patrol Guide mandates that the officer at the scene of a police incident must "use minimum necessary force." P.G. 203-11. That is not what happened in this case.

Respondent punched a man, who was rear handcuffed and lying face up in a police car, in the face with such force that he broke his jaw in two places. Respondent's assertion that he was justified in using force to prevent Person A from injuring him or his partner is not supported by his own account of events. At the time of the actual punch, Person A was lying flat out on the rear seat of the car. Person A's means of attacking Respondent, according to Respondent, was to try to kick his legs over his head at Respondent. I did not find Respondent's account of this to be credible, but even if Person A was capable of this gymnastic type maneuver in his intoxicated state, it does not alter the fact that the punch came after the supposed kick at a time when Person A's legs were "most likely" back down on the seat. Respondent, by intentionally punching Person A in the face with such force as to fracture his jaw in two places, at this point in time, used excessive force.

If Respondent needed to further restrain Person A to keep him from kicking his legs after he had him rear handcuffed inside the police car, he had other alternatives available to him rather than punching Person A in the face. Without indicating a specific alternative course of action that Respondent should have taken, but rather, just by way of example, the Patrol Guide suggests the use of restraining devices such as Velcro straps or mesh restraining blankets "to restrain or further restrain a subject whose actions or behavior may cause injury to himself/herself or others." P.G. 203-11. Additional potential alternatives to the level of force used were the options of calling for assistance or keeping the car door shut.

In this case, Respondent used excessive force to restrain Person A when he punched him, and therefore went beyond what a reasonable officer would have done in a similar situation.

PENALTY

CCRB requested a penalty of the forfeiture of 15 vacation days.

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 6, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of using excessive force against Person A, in that he punched Person A without sufficient legal authority. CCRB's penalty recommendation is consistent with prior cases involving unnecessary force against handcuffed prisoners. See

Disciplinary Case No. 85820/09 (Oct. 5, 2010), in which a fourteen-year police officer with no prior disciplinary record forfeited 15 vacation days for kicking a handcuffed prisoner in the head; *Disciplinary Case No. 85339/09* (Apr. 5, 2010), in which an eight-year sergeant with no prior disciplinary record negotiated a penalty of 15 vacation days for striking a handcuffed prisoner.

Accordingly, it is recommended that Respondent forfeit a penalty of 15 vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner – Trials

APPROVED

SEP 10 2015

WILLIAM J. BEATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER THOMAS WEIL
TAX REGISTRY NO. 949788
DISCIPLINARY CASE NO. 2014-12487

On Respondent's last three annual performance evaluations he received an overall rating of 4.0 "Highly Competent" twice and 3.5 "Highly Competent/Competent" once. He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Nancy R. Ryan
Assistant Deputy Commissioner – Trials